

NIH POLICY MANUAL

6035 - BROAD AGENCY ANNOUNCEMENTS

Issuing Office: OA/OAMP/DAPE 496-6014

Release Date: 12/12/01

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- 1. Explanation of Material Transmitted:** This manual chapter has been revised to remove the statement in Section E.8 that BAAs should receive a presolicitation review by the NIH Board of Contract Awards (Board). Section C.4, which referred the reader to NIH Manual 6304.71, Presolicitation and Preaward Review and Approval of Proposed Contract Actions, has also been deleted. NIH Manual 6304.71 addresses which types of contract actions are required for Board review. Therefore, it is considered redundant to address Board review in this document.

2. Filing Instructions:

Remove: NIH Manual 6035 - Broad Agency Announcements, dated 09/01/01

Insert: NIH Manual 6035 - Broad Agency Announcements, dated 12/12/01

PLEASE NOTE: For information on:

- o **content of this chapter**, contact the **Division of Acquisition Policy and Evaluation, OAMP, OA**, on **496-6014**.
- o **NIH Manual System**, contact the **Division of Management Support, Office of Management Assessment, OA**, on **496-2832**.
- o **on-line information**, enter this URL: <http://www1.od.nih.gov/oma/manualchapters>

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A. PURPOSE:

This Manual Chapter updates policy on the use of BAAs at the NIH. It incorporates the new location of the definition of BAAs in FAR Part 2, and discusses the requirements for past performance and Small Disadvantaged Business (SDB) evaluation factors in the BAA acquisition.

B. BACKGROUND:

The Competition in Contracting Act of 1984 (CICA) (Public Law 96-369) and Federal Acquisition Regulation (FAR) 6.102(d)(2) briefly address the BAA as one of several competitive procedures available for use in fulfilling the requirement for full and open competition in the acquisition process.

The FAR 2.101 contains a definition of BAAs and 35.016 provides general procedures to be followed in awarding BAAs for Research and Development (R&D) contracts with peer or scientific review (see FAR 6.102(d)(2)). The procedures below are in addition to those found in the aforementioned FAR citation and are unique to the NIH contracting community.

C. REFERENCES:

1. Competition in Contracting Act of 1984 (P.L. 96-369)
2. FAR 2.101, 6.102(d)(2), 19.201, 19.1202, and 35.016
3. NIH Manual 6315-1, Initiation, Review, Evaluation, and Award of Research and Development Contract Projects

D. POLICY:

In some circumstances, in order to realize the maximum competition possible pursuant to the CICA Act of 1984, and to fulfill requirements for scientific study and experimentation directed toward advancing the state-of-the-art, or increasing knowledge and/or understanding, the NIH will issue BAAs.

E. PROCEDURES:

As with any R&D contract project, the concept (basic purpose, scope and objectives of each

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topic area) for a BAA shall undergo scientific peer review prior to issuing a Request for Proposals.

In addition to the procedures found at FAR 35.016, a BAA should:

1. Be published in the NIH Guide to Grants and Contracts and the Commerce Business Daily or, as of October 1, 2001, in FedBizOpps, to reach as many organizations as possible. In accordance with FAR 35.016(c), if the published notice of a BAA is a general notice of ongoing research opportunities, it shall be published no less frequently than annually to reach the broadest possible audience. FAR 35.016(f) provides that synopsis of individual contract actions based on proposals received under the BAA is not required since the notice requirements of FAR 35.016(c) satisfy the publication requirement of FAR 5.2.
2. Contain evaluation criteria, which may include such areas as:
 - a. Overall technical feasibility of the proposed project.
 - b. Adequacy and relevance of the proposed research plan.
 - c. Capabilities, related experience, facilities, and techniques, which the offeror possesses (and which are considered integral factors) for achieving the objective.
 - d. Qualifications, capabilities, experience, and availability of proposed key personnel.
3. In accordance with FAR 15.304(c)(3)(ii), past performance must be included as an evaluation factor in all source selections expected to exceed \$100,000, unless the contracting officer documents the reason(s) why past performance is not considered an appropriate evaluation factor for the acquisition (FAR 15.304(c)(3)(iv)).
4. The extent of SDB participation in performance of the contract shall also be evaluated in all competitive unrestricted acquisitions expected to exceed \$500,000 (see also FAR 19.201 and 19.1202 for limitations).
5. Contain a statement regarding the maximum permissible period of performance and the anticipated number of awards to be made based on technical merit and available funds. The program staff estimates of the annual cost per contract or the total dollar amount available

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under the BAA and anticipated number of awards may also be included.

6. State the anticipated date of award.
7. Use the Uniform Contract Format as prescribed in FAR 15.204 and HHSAR 315.204.

F. EVALUATIONS OF BAA PROPOSALS:

The proposals received in response to a BAA shall be evaluated by the peer review process in accordance with the established evaluation criteria in the RFP. It should be emphasized to the technical reviewers that, like an SBIR project, the work requirements are developed and defined by the offeror and not the Government. A written evaluation report assessing the scientific merit and making overall recommendations as to the acceptability or unacceptability shall be prepared, and each proposal shall receive a numerical score, which is based on its technical merit as related to the evaluation criteria on which the organization has chosen to submit an offer. Subsequent awards shall be made after negotiations are conducted in accordance with FAR 15.4 and HHSAR 315.4, as appropriate. The awards will be subject to fund availability and the priority, which the Institute/Center (IC) determines to exist at the time of award.

Cost realism and reasonableness shall also be considered to the extent appropriate. Award documents will be tailored to the final negotiation with the selected offeror(s) and modified as appropriate for the type of contractor organization, cost and/or fee arrangement, and other elements as negotiated prior to the award.

G. RECORDS RETENTION AND DISPOSAL:

All records (**e-mail** and **non-e-mail**) pertaining to this Chapter must be retained and disposed of under the authority of NIH Manual 1743, Keeping and Destroying Records, Appendix 1, *NIH Records Control Schedule, Item 2600-A-4, Routine Procurement Files*.

NIH e-mail messages: The NIH e-mail messages (messages, including attachments, that are created on the NIH computer systems or transmitted over the NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. *These records must be maintained in accordance with current NIH Records Management Guidelines. If necessary, the back-up file capability should be created for this purpose. Contact your IC Records Officer for additional information.*

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All e-mail messages are considered Government property, and if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, the NIH staff conducting official reviews or investigations, and the Office of the Inspector General may request access to or copies of the e-mail messages. The e-mail messages must also be provided to Congressional Oversight Committees if requested and are subject to the Freedom of Information Act requests. Since most e-mail systems have back-up files that are sometimes retained for significant periods of time, e-mail messages and attachments may be retrievable from back-up files after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

H. MANAGEMENT CONTROLS

The purpose of this Manual Issuance is to provide updated guidance to contracting officers and program officials on the statutes, regulations, policies and procedures regarding Baas.

1. **Office Responsible for Reviewing Management Controls Relative to this Chapter:**

The Division of Acquisition Policy and Evaluation, Office of Acquisition Management and Policy, OA, is accountable for the method used to ensure that management controls are implemented and working.

2. **Frequency of Review:** On-going review.

3. **Method of Review:** The Division of Acquisition Policy and Evaluation, Office of Acquisition Management and Policy, will maintain appropriate oversight through reviews of the IC preaward contract files conducted by the NIH Board of Contract Awards. The NIH Board of Contract Awards reviews a percentage of contract actions from each IC. Issues identified by the NIH Board of Contract Awards are provided to the IC for corrective action. When repetitive issues are identified, these are brought to the attention of the Acquisition Management Committee, which is responsible for addressing and resolving common acquisition issues. In addition, the Head of the Contracting Activity (HCA), is routinely apprized of any difficulties in the IC implementation of policy. Depending on the nature and extent of the problem, the HCA may recommend additional review, policy guidance and/or training of the contract staff.

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4. **The Year-End Summary Report of Repetitive Issues** will be sent to the NIH Chief Contracting Officers and the Deputy Director for Management.